

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 45-003-13-1-5-01196-16  
45-003-14-1-5-01135-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel** 45-07-13-478-006.000-003  
**Assessment Years:** 2013, 2014

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013 and 2014 assessments of his property located at 4837 W. 27<sup>th</sup> Place in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the vacant property at \$2,200 in 2013 and \$1,400 in 2014.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On February 19, 2020, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”), held a hearing on Nowacki’s petition. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by his Hearing Officers, Robert Metz and Joseph E. James. They were all sworn as witnesses.

**RECORD**

4. The official record for this matter contains the following:
  - a. Petitioner Exhibit A: Notices of Hearing; property record cards (“PRC”s) (2011-2019); GIS map
  - Petitioner Exhibit B: Request for Public Record
  - Petitioner Exhibit C: Cover letter for Kovachevich appraisal for 739-29 W. 35<sup>th</sup> Avenue; land comparison approach; and PRC (2015-2019)
  - Petitioner Exhibit D: Cover letter for Kovachevich appraisal for 2517-2525 Washington Street; land comparison approach; and PRC (2015-2019) for each parcel

Petitioner Exhibit E: Cover letter for Kovachevich appraisal for 1109 Oklahoma Street; land comparison approach; PRC (2015-2019); and tax bill<sup>1</sup>

Petitioner Exhibits G-GG: PRCs for the properties listed in the land comparison approach<sup>2,3,4</sup>

- b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

### **BURDEN OF PROOF**

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances--where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I. C. § 6-1.1-15-17.2 (b) and (d).
6. Here, the value of the property did not change from 2012 to 2013. Nowacki therefore bears the burden of proof for 2013. The burden for 2014 will be determined based on the outcome of the 2013 appeal.

### **OBJECTIONS**

7. The Assessor objected to Petitioner Exhibits C, D and E on grounds of admissibility. He also objected to B-E and G-GG on relevance. He argues the appraisals are not for the subject property, and the assessment years under appeal do not line up with the sale ranges. Further, Nowacki is not an intended user or authorized to use the appraisals. The Assessor also cites to a Uniform Standards of Professional Appraisal Practice ("USPAP") Advisory Opinion, which states that while a person may have a copy of an appraisal, that person is not an intended user unless he was specifically identified by the appraiser. Nowacki received the appraisals in response to a Freedom of Information request. The ALJ took the objections under advisement. Because the exhibits provide information about other Lake County properties, they have at least minimal relevance to this proceeding. The objection about dates of sale goes to the weight of the evidence, which is solely in the discretion of the Board. Whether Nowacki is listed as an intended or authorized user for these appraisals is not sufficient reason to exclude them. We

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<sup>1</sup> Nowacki did not submit an Exhibit F.

<sup>2</sup> Nowacki states he is submitting PRCs for all properties listed on the land comparison approach chart. However, no PRC for 4522 Cedar Avenue in Hammond is found in the exhibits.

<sup>3</sup> Nowacki provided only one set of Exhibits B-E and G-GG for all hearings held this date. 52 IAC 2-7-1 provides that evidence must be submitted into the record of proceeding for it to be considered by the Board. In future hearings, the parties must prepare and submit a copy of all evidence they wish to be considered into the record at each hearing. Exhibits B-E and G-GG can be found in the file for petition 45-003-13-1-5-01193-16.

<sup>4</sup> The Assessor submitted no exhibits.

therefore overrule the objections and admit Exhibits B-E and G-GG. We note that these exhibits do not affect the outcome.

#### SUMMARY OF CONTENTIONS

8. Nowacki's case:
  - a. Nowacki purchased this property for \$82 at an auction attended by hundreds of eligible bidders. The property churned through the tax system year after year. Nowacki believes the property is worth more than he paid for it. This property was assessed at \$3,600 in 2011, eight times the value Nowacki has placed on it. The property has never been developed. It is comparable to a type of acreage. The Assessor has now applied an influence factor of -50% based on the inaccessibility of the property. This could have been done any time in the past 7-8 years. The problem in this instance is that the Assessor is applying an erroneous base rate that is inflating the value before applying the influence factor. The Assessor is currently applying a base rate of \$115, which is higher than that applied in built up areas. Over-assessment leads to excessive taxation, which is the problem in Gary. Nowacki requests a land only value of \$500 for each year. *Nowacki testimony; Pet'r Exs. C, D, E.*
  - b. Kovachevich's stated that a search for recent residential sales in Gary did not produce any significant activity. There is a lack of listings and sales which is emblematic of the lack of demand and market for residential lots in Gary. The appraiser indicates that the market is largely quiescent except for many foreclosures, tax, and sheriff sales. Market is defined as what a willing buyer would pay and a willing seller would accept in an arms-length transaction where neither is under any necessity to buy or sell. There are few arms-length transactions in Gary to use for comparison. *Nowacki testimony; Pet'r Exs. C, D, E.*
9. The Assessor's case:
  - a. The Assessor recommends the 2013 assessed value be reduced to \$1,400. This reduction is a result of increasing the influence factor from -20% to -50% based on the inaccessibility of the property. The 2014 value of \$1,400 should remain the same. *James testimony.*

#### ANALYSIS

10. Nowacki failed to make a case for reducing the 2013 and 2014 assessments. The Board reached this decision for the following reasons:
  - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or

- “the value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.
- b. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *See id.*; *see also Kooshtard Property VI, LLC v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). So may cost or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id.*; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments in property-tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices). The party must offer relevant market-based evidence. March 1<sup>st</sup> is the legal assessment date for both 2013 and 2014. Ind. Code § 6-1.1-2-1.5(a).

### 2013 Assessment

- c. Nowacki contends the 2013 assessment should be \$500 for land only, but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. Nowacki claims that the appraisals show the three appraised properties are over-assessed; therefore the subject property must also be over-assessed. We interpret and address this argument as a challenge to the uniformity and equality of his assessment. The Tax Court has previously held, “when a taxpayer challenges the uniformity and equality of his or her assessment, one approach he or she may adopt involves the presentation of assessment ratio studies which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals.” *Westfield Golf Practice Ctr., LLC v. Wash. Twp. Ass’r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). Such studies, however, must be prepared according to professionally acceptable standards and be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm’rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001). When a ratio study shows that a given property is assessed above the common level of assessment, that property’s owner may be entitled to an equalization adjustment. *See Dep’t of Local Gov’t Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that the taxpayer was entitled to seek an adjustment on grounds that its

property taxes were higher than they would have been if other property in Lake County had been properly assessed).

- e. The data Nowacki submitted is insufficient to support a uniform and equal argument. Not only did Nowacki provide incomplete appraisals, he failed to compare the properties to the subject property. He did not address similarities or differences. Although Nowacki presented data for other Lake County properties, he did not show that his incomplete data met the standards of a ratio study or constituted a statistically reliable sample.
- f. Nowacki also contends the Assessor is applying the wrong base rate to the property. This argument goes solely to the methodology used by the Assessor. Even if the Assessor made errors, simply attacking their methodology is insufficient. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, a taxpayer must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Id.*
- g. Because Nowacki offered no probative market-based evidence to demonstrate the property’s correct market value-in-use for 2013, he failed to make a case for a lower assessment than the value recommended by the Assessor. Where a Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). However, the Assessor recommended a value of \$1,400 for 2013. We accept the Assessor’s recommendation.

#### 2014 Assessment

- h. Because the final assessed value for 2013 is the same as the 2014 value, Nowacki bears the burden in 2014 as well.
- i. Although Nowacki again requested a value of \$500, he relied on the same evidence he presented for the 2013 appeal. We therefore reach the same conclusion—he failed to make a case for a reduction in the assessment.

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we order the 2013 assessment reduced to \$1,400. We order no change to the 2014 assessment.

ISSUED: May 14, 2020

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.